

UNITED NATIONS WORKING GROUP
ON INDIGENOUS POPULATIONS :
FIFTH SESSION

WGIP 87 Gov/OCE. Aus/2

AUSTRALIAN GOVERNMENT'S COMMENTS ON THE DRAFT
PRINCIPLES IDENTIFIED AT THE 1986 NGO WORKSHOP
(DOC. E/CN/4/SUB.2/AC4/1987/WP4/ADD1) AND ISSUES
IDENTIFIED FOR CONSIDERATION AT THE FIFTH SESSION
(DOC. E/CN/4/SUB.2/1985/22)

GENEVA

6 AUGUST 1987

THE AUSTRALIAN GOVERNMENT HAS CONSISTENTLY SUPPORTED THE MANDATE OF THE WORKING GROUP TO DEVELOP A SET OF STANDARDS ON INDIGENOUS RIGHTS. SPECIFIC COMMENTS ON THE SEVEN DRAFT PRINCIPLES DEVELOPED AT THE FOURTH SESSION OF THE WORKING GROUP HAVE BEEN SUBMITTED (E/CN.4/SUB 2/AC 4/1987/WPI/ADD4).

AUSTRALIA PROVIDES THE FOLLOWING SPECIFIC COMMENTS ON THE THREE DRAFT PRINCIPLES AGREED UPON AT THE NGO SEMINAR IN SEPTEMBER 1986 AND FORMALLY SUBMITTED BY THE CHAIRPERSON OF THE WORKING GROUP AT THIS SESSION (E/CN4/SUB 2/AC4/1987/WP4/ADD1) AS WELL AS ON THE THREE ISSUES IDENTIFIED FOR THE CONSIDERATION OF THE WORKING GROUP'S FIFTH SESSION IN THE PLAN OF ACTION (E/CN4/SUB 2/1985/22).

IN SO DOING, THE AUSTRALIAN GOVERNMENT WISHES TO REITERATE ITS CONCERN FOR THE NEED FOR CONSISTENCY IN INTERPRETATION AND SUGGESTS THAT THE DRAFT PRINCIPLES SHOULD BE WORDED AS CLOSELY AS POSSIBLE TO THE PROVISION OF THE INTERNATIONAL INSTRUMENTS ON WHICH THEY MAY BE MODELLED. IN THIS REGARD, AUSTRALIA SUPPORTS THE CHAIRPERSON'S REFERENCE IN HER OPENING STATEMENT TO THE FIFTH SESSION OF THE WORKING GROUP TO THE RELEVANCE TO ITS STANDARD SETTING MANDATE OF UNGA RESOLUTION 42/120 ON THE SETTING OF INTERNATIONAL STANDARDS IN THE FIELD OF HUMAN RIGHTS.

1. DRAFT PRINCIPLES IDENTIFIED IN DOCUMENT E/CN4/SUB 2/AC4/1987/WP4/ADD1

PRINCIPLE 8: THE RIGHT TO DETERMINE, PLAN AND IMPLEMENT ALL HEALTH, HOUSING AND OTHER SOCIAL AND ECONOMIC PROGRAMS EFFECTING THEM.

AUSTRALIA WOULD BE SYMPATHETIC TO THE OBJECTIVES OF THIS PRINCIPLE AS ITS OWN POLICIES ENCOURAGE THE DIRECT PARTICIPATION OF AND CONSULTATION WITH ABORIGINAL GROUPS IN THE PLANNING AND IMPLEMENTATION OF HEALTH, HOUSING AND

SPECIAL SERVICES DESIGNED TO MEET THE SPECIAL NEEDS OF ABORIGINAL PEOPLE.

WE SUGGEST HOWEVER, THAT THE PRESENT WORDING GIVES RISE TO SOME AMBIGUITY. FOR EXAMPLE, GIVEN ITS WIDEST INTERPRETATION, IT MAY IMPLY THAT ANY SERVICE, ALBEIT ONE PROVIDED TO ALL CITIZENS BY A GOVERNMENT, BUT WHICH MAY AFFECT AN INDIGENOUS GROUP, SHOULD BE DETERMINED, PLANNED AND IMPLEMENTED BY INDIGENOUS ORGANISATIONS.

IN ADDITION THE WORD "DETERMINE" WILL NEED SOME CLARIFICATION GIVEN THE REALITY THAT GOVERNMENTS WILL INEVITABLY RESERVE THEIR RIGHT TO MAKE ULTIMATE DECISIONS IN RELATION TO PUBLIC EXPENDITURE.

PRINCIPLE 9: THE RIGHT TO SPECIAL STATE MEASURES FOR THE IMMEDIATE, EFFECTIVE AND CONTINUING IMPROVEMENT OF THEIR SOCIAL AND ECONOMIC CONDITIONS, WITH THEIR CONSENT, THAT REFLECT THEIR OWN PRIORITIES.

AUSTRALIA HAS NO COMMENT ON THIS DRAFT PRINCIPLE OTHER THAN TO NOTE THAT ITS LANGUAGE FULLY REFLECTS THE POLICY AND PRACTICE OF THE AUSTRALIAN GOVERNMENT IN THE PROVISION OF SPECIAL SERVICES TO ABORIGINAL AUSTRALIANS.

PRINCIPLE 10: THE RIGHT TO BE SECURE IN THE ENJOYMENT OF THEIR OWN TRADITIONAL MEANS OF SUBSISTANCE, AND TO ENGAGE FREELY IN THEIR TRADITIONAL AND OTHER ECONOMIC ACTIVITIES WITHOUT ADVERSE DISCRIMINATION.

WHILE THE PRINCIPLE APPEARS TO COVER BASIC PROVISIONS, THE PHRASE "AND OTHER ECONOMIC ACTIVITIES" ADDS AN UNKNOWN AND EXTRA DIMENSION TO THE OBJECTIVE OF THIS PRINCIPLE. UNLESS THIS AMBIGUITY IS REMOVED WE WOULD HAVE DIFFICULTY IN ENDORSING THE PRINCIPLE AS CURRENTLY WORDED.

WE NOTE THAT THE PRINCIPLE WOULD APPEAR TO BE DESIGNED TO SECURE THE RIGHT TO ENJOY AND CONTINUE TRADITIONAL

ACTIVITIES AND SUGGEST THAT THE PHRASE "AND OTHER" IS INCONSISTENT WITH THIS OBJECTIVE.

2. ISSUES IDENTIFIED FOR CONSIDERATION AT THE FIFTH SESSION
(DOCUMENT E/CN.4/SUB.2/1985/22)

A) CONSIDERATION OF THE RIGHT TO AUTONOMY SELF
GOVERNMENT AND SELF DETERMINATION INCLUDING POLITICAL
REPRESENTATION AND INSTITUTIONS.

AUSTRALIA PRIDES ITSELF ON RECOGNISING THE RIGHTS OF THE INDIVIDUAL WHICH ARE ENSHRINED IN LEGISLATION AT BOTH THE STATE AND FEDERAL LEVEL AND IN POLITICAL PRACTICES AND PROCESSES. ON THE BROAD FRONT EVERY AUSTRALIAN, INCLUDING INDIGENOUS AUSTRALIANS, HAVE THE FUNDAMENTAL RIGHT TO PARTICIPATE IN ELECTIONS AT BOTH THE STATE AND FEDERAL LEVEL. THE FACT THAT ABORIGINES COMPRISE ONLY ABOUT 1% OF THE OVERALL AUSTRALIAN POPULATION TENDS TO UNDER-PLAY THEIR POTENTIAL INFLUENCE. FOR EXAMPLE, IN THE NORTHERN TERRITORY, 25% OF THE POPULATION IS ABORIGINAL, AND THEY ALSO CONSTITUTE A SIGNIFICANT PROPORTION OF THE ELECTORS IN A NUMBER OF OTHER KEY ELECTORATES.

ALL AUSTRALIANS HAVE THE RIGHT TO SEEK NOMINATION TO A PUBLIC OFFICE EITHER THROUGH ONE OF THE POLITICAL PARTIES OR AS AN INDEPENDENT. IN FACT, IN THE RECENT FEDERAL ELECTION IN AUSTRALIA, THERE WERE A NUMBER OF ABORIGINAL CANDIDATES FOR BOTH SENATE AND HOUSE OF REPRESENTATIVE SEATS.

MANY INDIGENOUS AUSTRALIANS PARTICIPATE AS PUBLIC OFFICERS AT LOCAL GOVERNMENT LEVEL THROUGHOUT AUSTRALIA. THIS INCLUDES HOLDING OFFICE IN LOCAL SHIRE OR TOWN COUNCILS AND EFFECTIVELY PARTICIPATING IN DECISION MAKING ON MATTERS AFFECTING ALL RESIDENTS IN THOSE AREAS.

IN RELATION TO COMMUNITIES OR GROUPS MADE UP ENTIRELY OF INDIGENOUS PEOPLE, SIGNIFICANT DECISION MAKING IS AVAILABLE AT THE LOCAL LEVEL. THIS ABILITY COMES ABOUT THROUGH THE

FORM OF LAND TENURE WHICH MAY BE HELD, THE EXISTENCE OF LOCAL COUNCILS OF ELECTED REPRESENTATIVES, AND ABORIGINAL RUN AND MANAGED SUPPORT ORGANISATIONS.

ABORIGINALS AND TORRES STRAIT ISLANDERS NOW HOLD VARIOUS FORMS OF SECURE TITLE TO OVER 12% OF THE AUSTRALIAN LAND MASS. THIS AREA IS FOUR TIMES THE SIZE OF THE UNITED KINGDOM, OR TWICE THE SIZE OF SWEDEN. ABORIGINALS AND TORRES STRAIT ISLANDERS LIVING IN THESE AREAS HAVE THE CAPACITY TO MAKE DECISIONS IN RELATION TO MATTERS AFFECTING THEIR COMMUNITY AND WHICH MIGHT AFFECT THEIR LIFESTYLES. THEIR CAPACITY AND AUTHORITY TO DO SO IS OFTEN MORE THAN THAT ENJOYED BY THEIR FELLOW AUSTRALIANS FOR EXAMPLE IN RELATION TO CONTROLS OVER MINING AND EXPLORATION, AND RIGHT OF CONTROL OVER ACCESS OF VISITORS. THIS SYSTEM ENSURES THAT INDIGENOUS PEOPLES ARE WELL PLACED TO INFLUENCE DEVELOPMENT WHICH MAY IMPACT UPON THEIR SOCIAL STRUCTURES.

MOST INDIGENOUS COMMUNITIES HAVE ESTABLISHED LOCAL COUNCILS, WITH DEMOCRATICALLY ELECTED MEMBERS, TO REPRESENT THEIR INTERESTS AND MAKE DECISIONS AT THE LOCAL LEVEL. MANY OF THESE LOCAL COUNCILS HOLD POWERS SIMILAR OR IDENTICAL TO OTHER NON-ABORIGINAL TOWN COUNCILS, THUS ENSURING PROPER REPRESENTATION OF THEIR VIEWS WHEN CONSIDERING MATTERS SUCH AS THE DAY-TO-DAY DELIVERY OF SERVICES, OR PROPOSALS WHICH MAY IMPACT UPON THEIR SOCIO-ECONOMIC DEVELOPMENT.

INDIGENOUS AUSTRALIANS HAVE ACCESS TO THE SAME SERVICES PROVIDED TO ALL AUSTRALIAN BY LOCAL, STATE AND FEDERAL GOVERNMENTS. IN ADDITION TO THESE SERVICES, AND IN RECOGNITION OF THE SPECIAL DIFFICULTIES FACED BY THE ABORIGINAL PEOPLE, THE FEDERAL GOVERNMENT ALSO PROVIDES FUNDS FOR EXTRA AND DEDICATED SERVICES BEYOND THOSE ALREADY AVAILABLE.

THE FEDERAL GOVERNMENT NOW FUNDS SOME 1,200 ABORIGINAL MANAGED AND RUN ORGANISATIONS WHICH ARE DIRECTLY ACCOUNTABLE TO THEIR OWN PEOPLE. THIS MEANS THAT IN ADDITION TO HAVING AUTOMATIC ACCESS TO ALL PUBLIC SERVICES, INDIGENOUS

AUSTRALIANS ARE ABLE TO ESTABLISH AND MANAGE THEIR OWN SERVICES MEETING THEIR OWN SPECIAL NEEDS.

AS AN EXAMPLE, WE NOW HAVE IN AUSTRALIA

- 19 ABORIGINAL CONTROLLED AND RUN LEGAL SERVICES OPERATING 66 OFFICERS THROUGHOUT AUSTRALIA;
- 54 ABORIGINAL CONTROLLED HEALTH SERVICES;
- APPROXIMATELY 300 DEDICATED ABORIGINAL HOUSING ORGANISATIONS;
- 65 ORGANISATIONS BEING FUNDED FOR THE PRESERVATION AND PROMOTION OF ABORIGINAL ART AND CULTURE;
- IN THE ORDER OF 70 ORGANISATIONS RECEIVING FUNDS FOR ABORIGINAL TRAINING PROGRAMS;
- ALMOST 100 ORGANISATIONS BEING FUNDED TO PROMOTE SPECIFIC ABORIGINAL EMPLOYMENT AND
- AGAIN, NEARLY 100 ORGANISATIONS ARE BEING FUNDED TO PROMOTE AND PROVIDE EDUCATIONAL SERVICES FOR ABORIGINALS.

AT THE NATIONAL LEVEL, IT SHOULD BE NOTED THAT ABORIGINALS NOW HEAD EVERY FEDERAL ORGANISATION DEALING SPECIFICALLY WITH ABORIGINAL POLICIES AND PROGRAMS. THE RECENT ANNOUNCEMENT BY THE AUSTRALIAN PRIME MINISTER TO BRING TOGETHER UNDER A NEW FEDERAL COMMISSION ALL FEDERAL ORGANISATIONS DEALING WITH ABORIGINAL PROGRAMS WILL FURTHER ENHANCE ABORIGINAL INVOLVEMENT. ONE COMMISSION, HEADED AND MANAGED BY ABORIGINAL PEOPLE, WILL BE ABLE TO DEVELOP AND CO-ORDINATE POLICIES, PROGRAMS AND PRIORITIES FOR FEDERAL GOVERNMENT EXPENDITURE FOR ABORIGINAL ADVANCEMENT.

B) CONSIDERATION OF THE RIGHT AND RESPONSIBILITY OF INDIGENOUS POPULATIONS, AS OF OTHERS, TO RESPECT UNIVERSALLY RECOGNISED HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS.

WHILE THIS WOULD APPEAR TO BE A BASIC PROVISION, SUCH A PRINCIPLE WOULD REQUIRE SOME CLARIFICATION.

THERE IS , FOR EXAMPLE, THE QUESTION AS TO WHETHER SUCH A RESPONSIBILITY CAN ATTACH TO AN INDIGENOUS POPULATION AS A COLLECTIVE UNIT. IF LEGAL RESPONSIBILITY IS BEING REFERRED TO IN THIS CONTEXT, THIS WOULD USUALLY BE A RESPONSIBILITY WHICH ATTACHED TO STATES AND, IN SOME CIRCUMSTANCES, INDIVIDUALS.

SUCH A PROVISION MAY ALSO NEED TO BE RECONCILED WITH THE RIGHT OF INDIGENOUS POPULATIONS TO MAINTAIN TRADITIONAL PRACTICES, NOT ALL OF WHICH MAY BE FULLY CONSISTENT WITH "UNIVERSALLY" ACCEPTED HUMAN RIGHTS STANDARDS, IE. THOSE SET FORTH IN THE HUMAN RIGHTS COVENANTS.

C) CONSIDERATION OF THE RIGHT TO HEALTH, MEDICAL CARE, OTHER SOCIAL SERVICES AND ADEQUATE HOUSING.

THE BROAD APPROACH ADOPTED BY THE AUSTRALIAN GOVERNMENT HAS BEEN TO ENSURE THAT ABORIGINES HAVE ACCESS TO GOVERNMENT SERVICES EQUAL TO THOSE ACCORDED TO OTHER AUSTRALIAN CITIZENS. ABORIGINES ARE, OF COURSE, ENTITLED TO RECEIVE SOCIAL SECURITY BENEFITS ON EXACTLY THE SAME BASIS AND AT THE SAME LEVELS AS OTHER AUSTRALIANS.

OVER AND ABOVE THE GENERAL SERVICES TO THE COMMUNITY, A RANGE OF SPECIAL SERVICES ARE PROVIDED TO ABORIGINES WHICH REFLECT THEIR SPECIAL NEEDS. GRANTS ARE MADE DIRECTLY BY THE FEDERAL GOVERNMENT TO PROPERLY CONSTITUTED ABORIGINAL GROUPS AND ORGANISATIONS WITH THE OBJECTIVE OF IMPROVING ABORIGINAL PARTICIPATION IN THE DELIVERY OF SERVICES, AND ENSURING THAT THESE SERVICES ARE TAILORED TO LEGITIMATE ABORIGINAL NEEDS.

GRANTS ARE MADE FOR HOUSING, FOR COMMUNITY, HEALTH AND MEDICAL SERVICES, LEGAL AID SERVICES, COMMUNITY INFRASTRUCTURE AND ECONOMIC ENTERPRISES. SOME 1,200 COMMUNITY BASED ORGANISATIONS ARE SUPPORTED IN THIS WAY.

HOUSING

SPECIAL GOVERNMENT PROGRAMS FOR THE PROVISION OF RENTAL HOUSING AND OTHER HOUSING ASSISTANCE TO ABORIGINALS INCLUDE:

- . GRANTS TO ABORIGINAL HOUSING ORGANISATIONS;
- . ABORIGINAL RENTAL HOUSING PROGRAM;
- . HOUSING LOAN SCHEME;
- . HOSTEL ACCOMMODATION;
- . SHELTER ASSISTANCE PROGRAM FOR TOWN CAMPS.

SINCE 1983, THE ABORIGINAL DEVELOPMENT COMMISSION, A COMMISSION ESTABLISHED BY AN ACT OF THE FEDERAL PARLIAMENT AND HEADED BY ABORIGINAL COMMISSIONERS, HAS MADE MORE THAN 1,500 INDIVIDUAL HOUSING LOANS WORTH SOME \$70M. IN ADDITION, THE COMMISSION HAS PROVIDED GRANTS TOTALLING \$130M TO COMPLETE ANOTHER 2,000 HOUSES. MORE THAN 23,000 ABORIGINAL FAMILIES HAVE BEEN HOUSED SINCE 1967 UNDER THESE PROGRAMS.

THE TOTAL ALLOCATION OF FUNDS FOR HOUSING AND ACCOMMODATION OF ABORIGINAL PEOPLE DURING THE 1986-87 FINANCIAL YEAR, INCLUDING FUNDING FOR RENTAL HOUSING UNDER A SEPARATE STATE HOUSING AGREEMENT ADMINISTERED BY ANOTHER DEPARTMENT, WAS APPROXIMATELY \$137M.

HEALTH

THE GOVERNMENT'S AIM IS TO ENSURE ABORIGINAL HEALTH PROGRAMS ARE AT THE LEVEL ENJOYED BY OTHER AUSTRALIANS. STRATEGIES DIRECTED AT IMPROVING INDIVIDUAL ABORIGINAL HEALTH LEVELS EMPHASISE IMPROVEMENT OF ENVIRONMENTAL CONDITIONS AND PROMOTION OF ABORIGINAL PARTICIPATION AND DECISION-MAKING IN HEALTH CARE PROGRAMS.

THE DEPARTMENT OF ABORIGINAL AFFAIRS NOW FUNDS 54 COMMUNITY-CONTROLLED ABORIGINAL HEALTH SERVICES AND THERE ARE FEW SIZEABLE ABORIGINAL COMMUNITIES WHICH DO NOT HAVE AT LEAST SOME ACCESS TO A COMMUNITY-CONTROLLED HEALTH SERVICE. ABORIGINALS, OF COURSE, HAVE THE RIGHT OF NORMAL ACCESS TO HEALTH SERVICES PROVIDED TO THE REST OF THE COMMUNITY.

IN THE 1986/87 FINANCIAL YEAR, THE DEPARTMENT OF ABORIGINAL AFFAIRS PROVIDED A TOTAL OF \$38M SPECIFICALLY TO IMPROVE ABORIGINAL PHYSICAL WELLBEING.